

## MEDICAL JURISPRUDENCE†

### Workmen's Compensation: Collection of Fee from Patient

In *Credit Bureau of San Diego v. Johnson*, 61 A.C.A., Sup. 545, the Appellate Division of the Superior Court of San Diego was presented with the question of whether a physician, rendering services to a patient who was injured in an industrial accident and therefore entitled to benefits under the Workmen's Compensation Law, could collect directly from such patient a fee over and above that paid to the physician by the employer's compensation insurance carrier. The Court held that where there was a contract with the patient for such fee, it could be enforced.

The patient, fire chief of Oceanside, received a head injury in an accident while responding to a fire call. The City of Oceanside carried compensation insurance and the carrier accepted liability so that no proceedings were had before the Industrial Accident Commission.

The accident was witnessed by the patient's family physician who took the matter in charge, diagnosed the case as skull fracture and called in another physician, a specialist in brain surgery. The patient lapsed into unconsciousness before the specialist arrived. Upon his arrival, the specialist advised that an immediate operation was necessary and this operation was performed with the consent of the patient's wife and with the assistance of the family physician.

At the trial of the case, the specialist testified that he was advised by the family physician at the time of his arrival at Oceanside that he was being called to care for the case as private employment and that the patient's wife had asked him to take care of the patient as a private case and that he would be paid accordingly. There was a conflict as to this evidence. It was unquestioned, however, that several weeks after the accident and after the patient had so far recovered as to be able to discuss the case with the specialist, there was a conversation between them in which the physician stated to the patient that in view of the operation and the type of the case, a fee of \$1000.00 would be reasonable. The patient replied in substance that such a charge in his opinion was reasonable and would be satisfactory. They also discussed the schedule of fees allowed by the Industrial Accident Commission and mutually agreed that for this case they were too low. The patient said in substance that he would see that \$1,000.00 was paid.

The specialist collected from the employer's insurance carrier an amount aggregating \$481.48. The balance of the \$1,000.00 charge was assigned to the plaintiff, Credit Bureau, and suit was filed against the defendant patient. A Municipal Court judgment was rendered in favor of

the plaintiff and defendant appealed. On appeal, the contention was made that the Workmen's Compensation Act afforded a complete and exclusive manner and procedure of adjusting all controversies between an injured employee and his attending physician and that the Industrial Accident Commission rather than the courts had exclusive jurisdiction over such controversies.

The Court ruled that as between an injured employee and his employer or insurance carrier, the Workmen's Compensation Act provides the only remedy. However, in the words of the Court: "The right to make lawful contracts are rights enjoyed by the citizens and under the protection of the Fourteenth Amendment of the Constitution of the United States"; here, the Court said, the brain specialist was proceeding with the knowledge and approval of the wife of the injured employee and was by implication, if not by express terms, proceeding under contract with the patient.

After partial recovery of the patient and when he was in a mental condition to contract, he had agreed with the specialist that the schedule of fees provided by the Industrial Accident Commission was inadequate for the services rendered. The Court ruled that in spite of the fact that this agreement was made after rendition of services, it became a legal, binding obligation upon the part of the patient. The Court referred to Section 4605 of the *Labor Code*, providing that an employee should have the right at his own expense to consult any physician he desires. It then rejected the contention that the Industrial Accident Commission had sole jurisdiction over a controversy such as this, stating that a contract to pay for medical services should be treated as any other contract in accordance with the constitutional rights of the parties. The Court held the fact that the surgeon got part of his compensation from a Workmen's Compensation insurance carrier to be immaterial.

### Concerning Practice of Physio-Therapy by Office Assistants:

(COPY)

April 13, 1944.

Dear Doctor:

Your letter regarding the nurse and physio-therapist currently employed in your office was referred to us by Doctor Kress.

You are correct in your understanding that there is no licensing requirement by either the State or Federal governments for the practice of physio-therapy. However, it is our opinion that in many instances the practice of physio-therapy would fall either within the practice of medicine or nursing as the law now stands depending upon the nature of the treatment administered in a specific case. In many cases such treatment we believe would constitute practice of nursing as it is defined in *Business and Professions Code*, section 2725, reading as follows:

"The practice of nursing within the meaning of this chapter is the performing of professional services requiring technical skills and specific knowledge based on the principles of scientific medicine, such as are acquired by means of a prescribed course in an accredited school of nursing as defined herein, and practiced in conjunction with curative or preventive medicine as prescribed by a licensed physician and the application of such nursing procedures as involve understanding cause and effect in

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

order to safeguard life and health of a patient and others."

There has not however been any court decision to this effect.

Although the employment of this individual in your office does not necessarily increase your malpractice liability, we believe it might well result in your malpractice insurance carrier denying liability in the event someone should be damaged through negligence. There is the consideration that it would be difficult to draw a line where the practice of physio-therapy would stop and the administration of nursing procedures would begin. If it should be determined by a court that nursing was being practiced by an unlicensed person and injury occurred to some patient, your insurance carrier might well deny any liability.

In our opinion, you are incurring a possible hazard in employing unlicensed personnel, particularly with regard to your insurance coverage.

Very truly yours,

HARTLEY F. PEART,  
111 Sutter Street, San Francisco.

## LETTERS †

### Concerning Need of Public Health Nurses in Los Angeles:

(COPY)

The Board of:  
CIVIL SERVICE COMMISSIONERS  
of the  
CITY OF LOS ANGELES  
11 City Hall

April 10, 1944.

*To the Editor:*—May we ask your assistance in publicizing our City's need for Public Health Nurses. The situation in this area is particularly acute because of the added responsibilities accompanying wartime conditions and a greatly increased population. These positions offer to Public Health Nurses the opportunity of becoming established in permanent civil service positions in the Los Angeles City Health Department.

We are enclosing a short article which we hope you will be able to include in an early issue of your periodical. We will appreciate this aid very much.

Thank you for your continued coöperation.

Very truly yours,

JOHN F. FISHER,  
General Manager.

Nine regular Los Angeles City Civil Service vacancies as Public Health Nurse must be filled as soon as possible. Because of the acute need for public health workers in this area, residence requirements have been waived. Candidates must be women who have California Registered Nurse and Public Health Nurse Certificates. Applicants will be rated by a professional board on the basis of applications and supplementary data submitted. There will be no written test. The salary range is from \$170 to \$190 per month.

Applications will be accepted until further notice. For additional information, write or telephone the Los Angeles City Civil Service Commission, Room 11, Los Angeles City Hall, MI-5211.

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.

### Concerning C.M.A. Appropriation to "United Public Health League":

(COPY)

STANFORD UNIVERSITY SCHOOL OF MEDICINE  
2398 Sacramento Street,  
San Francisco, California.  
April 24, 1944.

The Editor,

CALIFORNIA AND WESTERN MEDICINE,  
450 Sutter Street, San Francisco.

Dear Doctor:

In the March number of CALIFORNIA AND WESTERN MEDICINE the following statement is made, "—Idaho and California had already appropriated approximately \$3.00 per active member to assist in financing of the first year of operation" of the United Public Health League. [March, 1944 C. and W. M., page 109.]

The members of the San Francisco County Medical Society were not given an opportunity to vote on or even to discuss this action. We thus find ourselves forced to support an organization whose purposes and methods some of us disapprove and many doubt. These members cannot accept such an edict from above. You need a vote from the active members.

Yours sincerely,

(Signed) T. ADDIS, M. D.

P.S.

Dear Dr. Kress:

I shall be obliged if you will publish this note in CALIFORNIA AND WESTERN MEDICINE.

Yours sincerely,

(Signed) T. ADDIS M. D.

### Concerning "Health Services in Soviet Union":

(COPY)

AMERICAN RUSSIAN INSTITUTE

To Further Cultural Relations with the Soviet Union  
101 Post Street, San Francisco 8, California

April 26, 1944.

*To the Editor.*—We enclose herewith a complimentary set of three reprints of article by Dr. Henry Sigerist which were published in recent numbers of the *American Review of Soviet Medicine*. The articles are:

"Rural Health Services in the Soviet Union"

"Twenty-Five Years of Health Work in the Soviet Union"

"Medical Care Through Medical Centers in the Soviet Union"

Because we believe that an interchange of experiences between our two countries is important at present and for the future, we are eager to get as wide a circulation for these reprints as possible. We regret that we have to change 10 cents a copy to defray cost of reprinting them.

It was suggested to us that notice of the availability of these reprints at the Institute might be put in your Journal. We shall be very grateful for any ideas you may have which will help us in distributing these reprints.

Sincerely yours,

(Signed) ROSE ISAAK, *Secretary*.

**Chadwick's Sign.**—James Read Chadwick was a gynecologist of note and a man of engaging personality. He had a strong organizing bent, being instrumental in the founding of both the American Gynecological Society and the Boston Medical Library. He served actively as a secretary in the Society for many years. His many fact-finding researches greatly enriched gynecological literature.—Warner's *Calendar of Medical History*.